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BEFORE THE

## Federal Communications Commission

WASHINGTON, D.C.

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In re Applications of

SCRIPPS HOWARD BROADCASTING  
COMPANYFor Renewal of License of  
Station WMAR-TV,  
Baltimore, Maryland

and

FOUR JACKS BROADCASTING, INC.

For a Construction Permit for  
Television Facility on  
Channel 2 at  
Baltimore, Maryland

MM Docket No. 93-94

File No. BRCT-910603KY

RECEIVED

JUN - 8 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

File No. BPCT-910903KE

To: The Honorable Richard L. Sippel  
Administrative Law Judge**REPLY TO OPPOSITION TO  
PETITION TO ENLARGE ISSUES AGAINST  
SCRIPPS HOWARD BROADCASTING COMPANY**

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### SUMMARY

In its Petition to Enlarge Issues, Four Jacks demonstrated that issues should be added to explore Scripps Howard's history of anticompetitive practices and discriminatory conduct, its misrepresentation and lack of candor before the Commission, and its abuse of the Commission's processes by obstructing and interfering with the prosecution of Four Jacks' application and other unrelated applications filed by Four Jacks' principals. Scripps Howard's Opposition to Four Jacks' Petition admits crucial facts, misinterprets the law, and totally fails to obviate the need for the requested issues.

First, both Scripps Howard and the Mass Media Bureau misunderstand the abuse of process standard applicable to Scripps Howard's conduct toward Four Jacks and its principals. Clear Commission precedent holds that while applicants may undertake reasonable investigation of their opponents, such investigations may not interfere with the opponent's ability to prosecute its application, may not entail the solicitation of adverse information based on false facts and must be reasonably related to the proceeding at issue. Scripps Howard has violated these precepts. It has supplied local officials with knowingly false information as to Four Jacks' tower proposal; by its own admission, it has interfered in landlord/tenant relationships with the purpose of obstructing Four Jacks' application; and it has filed specious objections against unrelated applications filed by Four Jacks' principals.

Scripps Howard's attempts to deflect the addition of issues based on its past history of anticompetitive conduct are also baseless. Scripps Howard has been adjudicated by a California jury to have bribed local officials in return for a monopoly cable franchise, and the Commission has never meaningfully considered the impact of this finding on Scripps Howard's qualifications. Moreover, the Commission has squarely held that Scripps Howard's lack of formal party status in the California case is irrelevant. Scripps Howard's citation of due process precedent is equally inapposite, since Scripps Howard will be entitled to a full hearing under the requested issue.

Additionally, Scripps Howard is off base in asserting that an adjudicated finding of "worst-case" racial discrimination by its Memphis TV station cannot be considered in this proceeding. Ample Commission precedent supports the addition of an issue concerning Scripps Howard's qualifications to consider the impact of this blistering finding -- which was vacated only due to an out-of-court, after-the-fact settlement. Commission precedent also makes clear that the grant of the Memphis station's renewal does not preclude further examination of Scripps Howard's racial discrimination, and that this conduct is not sufficiently remote in time to be precluded from consideration since the adverse judgment did not occur until 1987.

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To: The Honorable Richard L. Sippel  
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**REPLY TO OPPOSITION TO  
PETITION TO ENLARGE ISSUES AGAINST  
SCRIPPS HOWARD BROADCASTING COMPANY**

Four Jacks Broadcasting, Inc. ("Four Jacks"), by its attorneys, hereby submits its Reply to the "Opposition to Petition to Enlarge Issues Against Scripps Howard Broadcasting Company," filed by Scripps Howard Broadcasting Company ("Scripps Howard") on May 26, 1993. The Four Jacks Petition to Enlarge Issues requested issues as to Scripps Howard's anticompetitive practices and discriminatory conduct, misrepresentation/lack of candor and abuse of process. Because Scripps Howard's abuse of process has been so egregious and because it is integrally related to this proceeding and Scripps Howard's character

qualifications to be a Commission licensee, Four Jacks is addressing that issue first in this Reply.

**I. The Factual Admissions Contained in  
Scripps Howard's Opposition Necessitate  
the Addition of the Requested Abuse of  
Process Issue Under Well Established  
Commission Precedent**

1. Four Jacks has requested the addition of an abuse of process issue based on a series of actions taken by Scripps Howard and its agents which were designed to obstruct and interfere with the prosecution of Four Jacks' application for Channel 2 and the existing businesses owned by Four Jacks' principals. Scripps Howard's conduct amounts to pure harassment for which its Opposition offers no justifiable excuse. Indeed, the Opposition contains factual admissions that demonstrate Scripps Howard's lack of good faith.

2. Scripps Howard's abusive actions have included the following: (a) submitting erroneous information to Baltimore County zoning officials and a county engineer; (b) soliciting a false statement from the regional manager of Motorola, a tenant on the Catonsville, Maryland tower owned by Four Jacks' principals; (c) participating in the prosecution of an application to modify the height of Four Jacks' proposed tower filed by Nationwide Communications, Inc. ("Nationwide"), a tenant on the tower, in order to generate FCC and FAA problems for Four Jacks; and (d) filing specious petitions for reconsideration of the grants of pro forma assignment applications as well as an objection to a microwave application filed by Four Jacks'

principals in connection with their existing Baltimore television station, WBFF(TV).

3. Scripps Howard's Opposition is devoid of any analysis of the Commission case precedent on abuse of process cited by Four Jacks, and the Mass Media Bureau's pleading offers an erroneous standard.<sup>1/</sup> The Bureau contends that "[t]here is a heavy burden in raising strike application or related abuse of process issues." (M. Med. Bureau Oppos., p. 5). It is important to note that abuse of process cases set forth a different standard than strike application cases. It is also important to examine what the abuse of process cases say in order to properly evaluate Scripps Howard's conduct.

4. In WIOO, Inc., 28 R.R.2d 685 (Rev. Bd. 1973), the Review Board stated:

The purpose of a comparative broadcast hearing is to enable the Commission to select the applicant best qualified to provide service to the public. Any attempt by a competing applicant to subvert or obstruct the prosecution of another application deprives the Commission of a real and meaningful choice between competing applicant, severely abuses the Commission's comparative hearing process and, consequently, cannot be condoned.

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<sup>1/</sup> Scripps Howard cites J. Sherwood, Inc., 63 F.C.C.2d 151 (Rev. Bd. 1976). That case did not involve an abuse of process issue. The Bureau cites Viacom Int'l, Inc., 63 R.R.2d 290 (1987). While Viacom did involve an abuse of process question, the Commission found that Viacom had a right to participate in a local zoning hearing because it was an adjacent landowner. Thus, the case is not helpful to Scripps Howard. Moreover, the Viacom case did not involve harassment of the magnitude presented here.

Id. at 689. The Board observed that the purpose of one applicant's investigation of another applicant and the techniques employed had to be "reasonably related to the objectives of the proceeding itself" Id., citing Chronicle Broadcasting Co., 19 F.C.C.2d 240, 245 (1969). Since it appeared that the applicant WIOO, Inc. had conducted an unreasonable investigation of a competing applicant, the Board found that appropriate abuse of process issues were warranted.

5. In BenDel Broadcasting Corp., 98 F.C.C.2d 164, 55 R.R.2d 1625 (1984), the Commission added an abuse of process issue against an FM applicant which, by inquiries and the enlisted aid of a Congressman, had caused the Small Business Administration ("SBA") to undertake an investigation of its opponents' loan arrangements and had caused the SBA's Regional Director to request a lending institution to withhold disbursement of a loan pending an examination of the opponent's status. The Commission expressed its concern that the applicant's conduct might have gone beyond the level of zealous investigation and reflected an intent to interfere with its opponent's ability to prosecute its application.

6. In David Ortiz Radio Corp. v. FCC, 941 F.2d 1253, 69 R.R.2d 1011 (D.C. Cir. 1991), the U.S. Court of Appeals for the D.C. Circuit held that the Commission's dismissal of a motion to add an abuse of process issue against an FM applicant was arbitrary and capricious. The motion seeking the issue alleged that a 1% equity owner of the applicant had impersonated a Commission inspector in order to obtain information about the movant, and the court held that the Commission had failed to



address movant's argument that the impersonation amounted to an abuse of process intended to frustrate the prosecution of its application. Furthermore, the court stated that the fact that the allegation of misconduct was flatly denied by the applicant's principal and that this denial was supported by a third party did not justify the Commission's refusal to add the issue. According to the court:

A hearing, with its cross-examination and opportunities to observe the demeanor of witnesses, can frequently resolve a conflict that appears irresolvable on paper; indeed, determining which of several conflicting accounts is accurate is "precisely the function of an evidentiary hearing."

69 R.R.2d at 1016, citing California Public Broadcasting Forum v. FCC, 752 F.2d 670, 680 (D.C. Cir. 1985).

7. The Presiding Judge in KHYM Broadcasting Co., 42 R.R.2d 1038 (ALJ 1978) added a character issue against an applicant who solicited a written statement from the owner of a tower specified as an antenna site by a competing applicant to the effect that the tower would not support the weight of the equipment proposed by the competing applicant. In specifying the issue, the Judge commented that the applicant had apparently given the tower owner inaccurate information as to the weight of the equipment and had solicited the statement knowing that the owner could not make an accurate judgment.

8. From these various cases the following principals

to the objectives of the comparative proceeding.

- (ii) An applicant conducting an investigation of its opponent must not interfere with the opponent's ability to prosecute its application.
- (iii) It is an abuse of process to provide inaccurate information to others and solicit statements based on such inaccurate information.
- (iv) Where there is a conflict as to whether an abuse of process occurred, an evidentiary hearing should be held.

9. When Scripps Howard's conduct is examined in relation to the principles set forth in the above abuse of process cases, it is clear that Scripps Howard has engaged in serious and repeated abusive tactics which necessitate addition of an abuse of process issue.

**A. Scripps Howard Submitted Erroneous Information to Baltimore County Zoning Officials and a County Engineer**

10. Scripps Howard commissioned a study of Four Jacks' proposed tower site by a consultant it selected, Vlissides Enterprises. Since Mr. Vlissides was paid by Scripps Howard, the outcome of his study was of course predetermined. In any case, Scripps Howard admits in its Opposition that the Vlissides study "is necessarily and admittedly based on some assumptions." It also admits that Mr. Vlissides only visited "the site's periphery." (Scripps Howard Oppos., pp. 23-24).

11. The Vlissides study and the various statements Scripps Howard has made to Baltimore zoning officials and the FCC are all based on a fallacious premise -- specifically, that Four Jacks

will top-mount its Channel 2 antenna at the 666 foot level of the tower and therefore that the structure's height will be raised above the height at which it was originally constructed, and which has been approved by the FAA and local authorities. In fact, Scripps Howard's Opposition states as follows:

Turning to the contact Scripps Howard made with Baltimore County officials, Scripps Howard has made no secret of its writing to Baltimore County officials on the issue of whether Four Jacks' principals should be permitted to raise their tower's height as proposed in their application.

(Scripps Howard Oppos., p. 24; emphasis added).

The Opposition further states:

Advising the local authorities that Four Jacks would have to raise the tower's height was both necessary and particularly appropriate here because of Four Jacks' well demonstrated approach in this proceeding of ignoring the necessity for obtaining government approvals for increasing the existing height of its tower.

(Scripps Howard Oppos., p. 25).

12. Scripps Howard has repeatedly advanced its false and unfounded allegation that Four Jacks will raise the height of its existing tower. Four Jacks has never proposed to raise the height of its existing tower above the height which has been approved by the FAA and zoning authorities. In fact, the actual tower portion of the structure is proposed to be shortened to accommodate the Channel 2 antenna. As reflected by the May 25, 1993 Statement of Herman E. Hurst, Jr., Four Jacks' consulting

engineer, a copy of which is attached hereto as Attachment A,<sup>2/</sup> "[a]s has been clearly established, Four Jacks proposes to maintain the existing structure's authorized airspace of 709 feet above ground level (216.1 meters) and 1249 feet above mean sea level (380.7 meters) . . . . As a result, the tower must be shortened to 602 feet in order to accommodate the proposed antenna and maintain the tower's authorized airspace." (Attach. A, p. 2).

13. Mr. Hurst also demonstrates that the Vlissides study commissioned by Scripps Howard is similarly erroneous. The Vlissides study is "based on the erroneous assumption that the Channel 2+ transmitting antenna will be top-mounted at the 666-foot level of the tower (this assumption would require an overall structure height of 770 feet:  $666 + 104 = 770$  feet). (Attach. A, p. 3).

14. Scripps Howard's erroneous statements are perpetuated in the January 28, 1992 letter that Scripps Howard's local attorney, Stephen J. Nolan, sent to the Director of the Office of Zoning Administration and Development Management of Baltimore County and to the Chief Building Engineer for Baltimore County Department of Permits and Licenses. Mr. Nolan's letter illustrates the devious nature of Scripps Howard's conduct. While acknowledging that Four Jacks proposes to use a 666 foot guyed tower, he goes on to state:

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<sup>2/</sup> Mr. Hurst's Statement is also attached to Four Jacks' Opposition to Scripps Howard's Motion to Enlarge Issues Related to Tower Site.

Nonetheless, a review of Four Jacks' application before the Federal Communications Commission indicates that they might need to increase the height of the tower.

(See Attachment B hereto; emphasis added). On the basis of this gross speculation, Mr. Nolan continues:

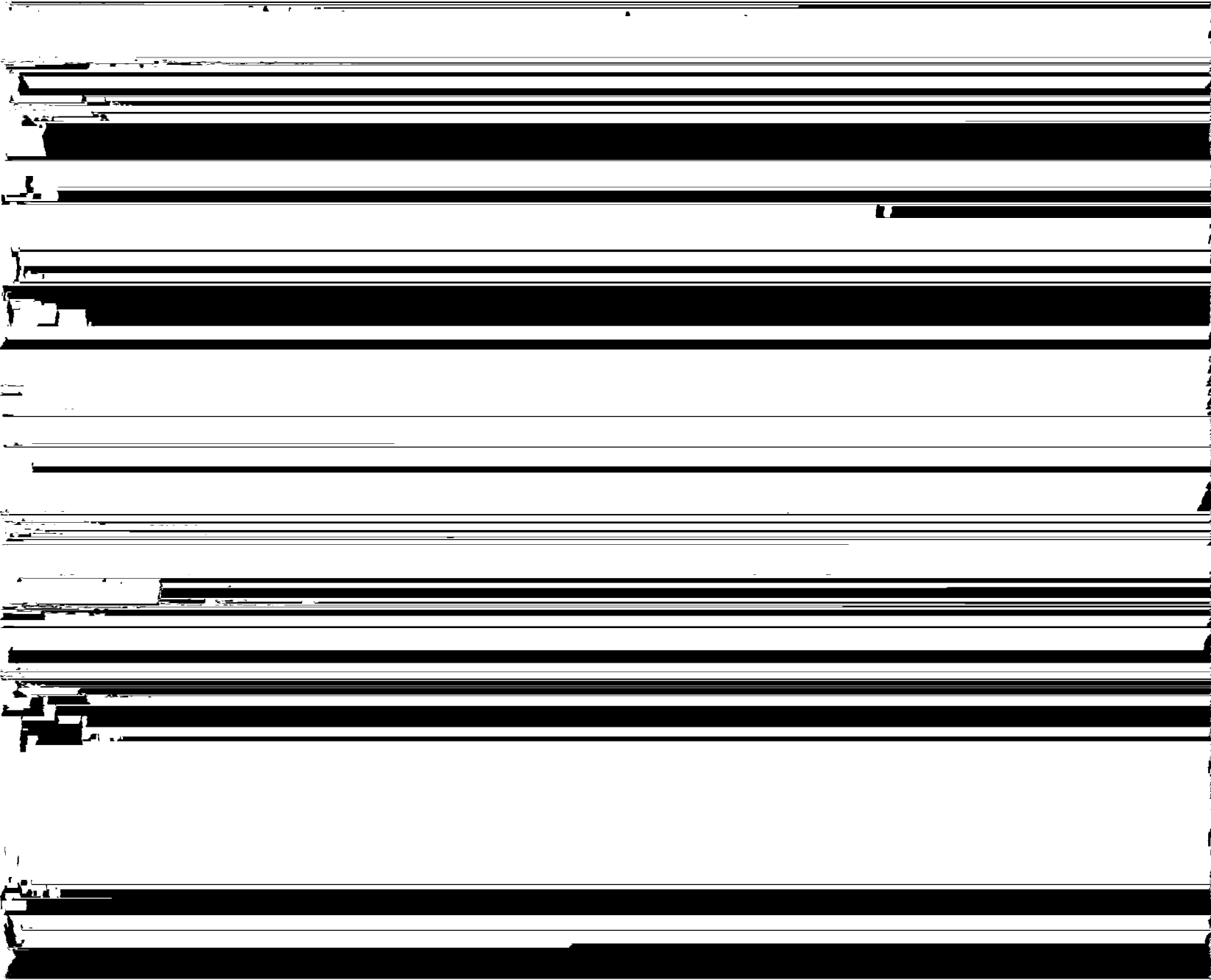
It is our opinion that any increase in height over the present 666 feet would require: (1) A full County Review Group (CRG) meeting under the new rules and method; (2) A special hearing/special exception under all the tower rules in the Zoning Regulations and Development Regulations; and (3) Compliance with all state and federal requirements including FCC, FAA and all applicable environmental regulations.

Mr. Nolan's letter to the county officials also alleges that "the present tower is overstressed and very possibly unsafe." The erroneous Vliissides study was attached to Mr. Nolan's letter (see Attach. B).

15. Significantly, Mr. Nolan's January 28, 1992 letter is not contained in the "Motion to Enlarge Issues Related to Tower Site" that Scripps Howard filed against Four Jacks. It was only in its Opposition to Four Jacks' Motion to Enlarge Issues that Scripps Howard disclosed the contents of Mr. Nolan's January 28th letter.

16. Scripps Howard, Mr. Nolan and Mr. Vliissides have knowingly supplied erroneous information to county officials and to the FCC. Moreover, Scripps Howard solicited statements from the county officials based on the information it knew was erroneous. That Scripps Howard knew the information was inaccurate is evident from Mr. Nolan's statement that Four Jacks

"might need to increase the height of the tower." The conduct exhibited by Scripps Howard is clearly abusive. See KHYM Broadcasting Co., supra; BenDel Broadcasting Corp., supra; WIOO, Inc., supra. See also Rocket Radio, Inc., 56 F.C.C.2d 238, 35 R.R.2d 399 (Rev. Bd. 1975) (where there was a serious question as to whether an applicant had acted to obstruct its opponent's efforts to obtain a building permit, character issues were warranted); McClatchy Newspapers, 42 R.R.2d 637 (ALJ 1978) (a



19. On February 28, 1992 Mr. Bezold wrote back. Although the letter from Scripps Howard's counsel had not referenced any pleading, Mr. Bezold wrote, "I am returning your copy of the pleading filed by Scripps Howard Broadcasting Company as this pertains to business between your client and Channel 45 not Motorola, Inc." (Four Jacks Petition, Ex. 22). In response to the letter from Scripps Howard's counsel, Mr. Bezold states:

As I thought it was communicated, for the past few years, anytime that Motorola expressed an interest in adding or changing an antenna on the tower, it was necessary for a tower structural analysis to be performed. To date, there have been no circumstances in which a completed analysis prohibited my company from adding or changing what was proposed. Thus, I feel that the line in your letter stating that the tower is currently full is not entirely true.

(Four Jacks Petition, Ex. 22).

20. Scripps Howard argues that it did not attempt to mislead Mr. Bezold and then amazingly contends that Mr. Bezold's letter offers support for its position that the tower cannot support a VHF Channel 2 antenna. Mr. Bezold's letter offers no such support. But the correspondence does demonstrate Scripps Howard's intent to obstruct the prosecution of Four Jacks' application. Furthermore, Scripps Howard has not explained why it sent a copy of a pleading in this case to Mr. Bezold. Scripps Howard has absolutely no business interfering with tenants on Four Jacks' tower. Yet, it has interfered at least twice -- once in contacting Mr. Bezold of Motorola and a second time in participating in an application filed by Nationwide as set forth in the next section.

- C. Scripps Howard Participated in the Prosecution of an Application to Modify the Height of Four Jacks' Proposed Tower Filed by Nationwide, a Tenant on the Tower, in Order to Generate FCC and FAA Problems for Four Jacks



D. Scripps Howard Has Filed Specious Petitions for Reconsideration of the Grants of Pro Forma Assignment Applications as Well as a Petition to Deny a Microwave Application Filed by Four Jacks' Principals in Connection With Their Existing Television Station, WBFF(TV)

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23. As if Scripps Howard's activities were not abusive enough, it has filed a series of pleadings which violate the principle that "any investigation of a competing applicant must be reasonably related to the objectives of the proceeding itself." WIOO, Inc., supra, at 689.

24. Scripps Howard does not deny that it filed petitions seeking reconsideration of the grants of short-form assignment applications filed by Four Jacks' principals in connection with other stations they own. These pro forma assignments had nothing whatsoever to do with the Four Jacks application or with Scripps Howard. Scripps Howard's Opposition fails to come up with any justifiable rationale for the filing. It merely claims vaguely that "Scripps Howard's interests were affected by the staff's decision." (Scripps Howard Oppos., p. 14).

25. The obstructive and harassing nature of Scripps Howard's conduct in seeking reconsideration of the grants of the pro forma assignment applications was heightened by Scripps Howard's subsequent objection to a microwave application filed for WBFF(TV). Once again, Scripps' filing was not "reasonably related to the objectives of the comparative proceeding." Although Scripps Howard's Opposition attempts to argue that its objection "raised a valid and straight-forward legal issue," it does not even state what that legal issue was or how the microwave application had any bearing on Scripps Howard.

26. In sum, Scripps Howard has engaged in precisely the kind of obstructive and over-zealous investigative techniques that the Commission has soundly condemned as abusive. Indeed, the scope of Scripps Howard's abusive tactics exceeds all of the cases previously discussed, and Scripps Howard does not deny its intent to obstruct. Accordingly, prevailing Commission case precedent requires the addition of the requested abuse of process issue.

**II. Scripps Howard's Past Anticompetitive  
Conduct Requires the Addition of an Issue  
in This Proceeding**

27. Aside from Scripps Howard's gross abuse of the Commission's processes with respect to Four Jacks and its principals, Four Jacks demonstrated in its Petition that Scripps Howard has a long history of misconduct designed to drive out competitors to its media enterprises. This history includes one adjudicated finding of misconduct in the procurement of its Sacramento, California cable franchise, as well as a vast array of retaliatory threats, retributive lawsuits, and predatory conduct designed to exclude competition -- all of which matters Scripps Howard paid large sums of money to settle before any adjudications were rendered.

28. Significantly, nowhere in its Opposition does Scripps Howard even attempt to dispute the numerous facts set forth in Four Jacks' Petition. Instead, Scripps Howard retreats into crabbed and incorrect legal analysis, maintaining that (i) the special verdicts rendered by the jury in Pacific West Cable Co. v. City of Sacramento, 672 F. Supp. 1322 (E.D. Cal. 1987)

("PacWest") did not constitute an adjudicated finding of anticompetitive misconduct on the part of Scripps Howard's Sacramento cable subsidiary; and (ii) the non-adjudicated facts concerning Scripps Howard's anticompetitive activities -- which Scripps effectively concedes to be true -- nonetheless "are not subjects for Commission review." Neither of these contentions has any merit.

29. First, Scripps Howard's claim that the PacWest special verdicts "do not purport to be holdings against any Scripps Howard related company" (Opposition at 3) is ludicrous, defying both common sense and the very language of the verdicts. In PacWest Special Verdict No. 12(d), the jury expressly found that the Sacramento cable franchising process was

a sham used by defendants [the local governments] to promote the making of cash payments and provision of 'in kind' services by the company ultimately selected to provide cable television service to the Sacramento market[.] (Emphasis added).

The "company ultimately selected to provide cable television service to the Sacramento market" -- found by the jury to have rendered improper payments and services to franchising officials -- was, of course, the Scripps Howard-controlled franchisee. Lest there be any doubt on this score, Exhibit 1, Tab A, Att. V of Four Jacks' Petition makes clear that the PacWest jury findings were propelled by Scripps Howard's subsidiary's activities in peddling local influence to obtain the cable franchise in exchange for minority shares in the franchisee. Scripps Howard's position that the language of the special

verdicts does not purport to find wrongdoing by Scripps Howard's  
cable subsidiary simply does not wash.

(emphasis added). Though the renewal application form and the scope of cognizable non-FCC misconduct have subsequently been modified from time to time, the Commission has never retreated from its policy that whether or not a licensee was a party in non-FCC litigation is irrelevant to the impact of an adjudicated finding in such litigation.

32. Scripps Howard nonetheless relies heavily on four so-called "explicit rulings" by the Mass Media Bureau, all of which dealt with petitions against Scripps Howard broadcast applications by PacWest and related entities, and all but one of which were one-page letter actions granting the petitioner's voluntary request to withdraw the subject petition.<sup>3/</sup> However, the only "ruling" in these letters on Scripps Howard's licensee qualifications was virtually identical stock language stating that "we have fully considered the matters set forth in [the withdrawn pleadings] and conclude that there are no substantial and material questions of fact that would warrant any further inquiry." This "rubber-stamp" verbiage does not meet any test for adequate agency consideration of an issue. See Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Automobile Ins. Co., 463 U.S.

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<sup>3/</sup> The fourth staff action, a November 27, 1987 letter decision denying informal objections against the renewal applications for Scripps Howard stations WCPO-TV, Cincinnati, Ohio, WEWS-TV, Cleveland, Ohio, and WXYZ-TV, Detroit, Michigan, never purported to make findings concerning the impact of the PacWest jury verdicts or the other Sacramento antitrust suits on Scripps Howard's licensee qualifications. That letter merely ruled that Scripps Howard was not required to report these cases. As discussed above, to the extent the staff's unpublished November 27, 1987 decision held that the PacWest verdicts did not constitute an adjudication adverse to Scripps Howard, such a holding flies in the face of established Commission policy and is entitled to no precedential value.

29, 43 (1983) (an agency must "articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made'").<sup>4/</sup> Quite simply, there is no indication that the Commission has ever meaningfully examined the impact of the anticompetitive conduct by Scripps Howard's Sacramento cable subsidiary on Scripps Howard's qualifications to be a broadcast licensee.

33. Scripps Howard also maintains that "it would be a violation of due process to apply against Scripps Howard the verdicts of a proceeding in which it did not participate on the merits and to which it was not even a party." Scripps Howard cites Supreme Court cases dealing with the preclusive effects of prior judgments on parties in subsequent lawsuits, the facts of which bear no resemblance to those involved here,<sup>5/</sup> and argues

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<sup>4/</sup> The most recent of the Mass Media Bureau's "decisions," a letter dated July 22, 1992 dismissing a petition to deny filed by PacWest against the license renewal applications of Scripps Howard stations KUPL(AM) and KUPL-FM, Portland, Oregon, stated unequivocally that PacWest's allegations against Scripps Howard's Sacramento cable subsidiary would be "resolved in the context of the WMAR-TV proceeding." Although the instant proceeding was the only one pending concerning WMAR-TV at the time of the July 22, 1992 letter, the Judge has apparently accepted the Bureau's contention that the Audio Services Division's July 22, 1992 letter referred to PacWest's petition for reconsideration of the application seeking the assignment of WMAR-TV to Scripps Howard -- a petition that the Video Services Division had dismissed, allegedly unbeknownst to the another part of the same Bureau, some 17 months earlier. See Memorandum Opinion and Order, FCC 93M-303 (released May 26, 1993), para. 6. Even assuming that this explanation is defensible -- a proposition that Four Jacks vigorously disputes -- the July 22, 1992 letter gave no more of a reasoned consideration of the PacWest allegations than the Bureau's three prior rulings.

<sup>5/</sup> In Martin v. Wilks, 490 U.S. 755 (1989), the Supreme Court held that a group of firefighters was not precluded from  
(continued...)

34. Scripps Howard, however, misses the point. The Presiding Judge is not being asked to apply the PacWest findings against Scripps Howard's subsidiary as a binding judgment against Scripps Howard in this hearing. Rather, the Judge is merely being asked to take cognizance of the adjudicated finding in that case, and to conduct a hearing regarding the impact of that finding on Scripps Howard's character qualifications. Since Scripps Howard will have its "day in court" under such an issue, the due process cases Scripps Howard cites are simply inapplicable.<sup>6/</sup>

35. In sum, Scripps Howard's contention that the PacWest jury findings do not constitute an adverse adjudication against

it is legally untenable. Scripps Howard clearly has been found to have engaged in anticompetitive conduct, and an appropriate issue must be added to explore the impact of this adjudicated finding on Scripps Howard's qualifications. An issue must also be added to determine whether Scripps Howard misrepresented facts or lacked candor in not disclosing this adverse adjudication in its WMAR-TV license renewal application.

36. Scripps Howard further contends that the numerous instances of anticompetitive conduct by Scripps Howard which have not been adjudicated should not be considered. However, it must be remembered that Scripps Howard has denied none of these allegations, and in fact has paid large sums of money to settle these lawsuits. Moreover, Four Jacks already has demonstrated that Scripps Howard has been adjudicated guilty of anticompetitive conduct in a related situation, and that Scripps Howard has proven itself all too willing to abuse the Commission's processes to eliminate its Baltimore competition. Given these facts, and the Commission's well-established concern with anticompetitive activity by its licensees, it would hardly serve the public interest not to consider the full scope of media-related anticompetitive conduct by Scripps Howard under an appropriate issue. The numerous and uncontested allegations of such conduct against Scripps Howard must be explored at hearing, in addition to the impact of the PacWest adjudication.



III. The Requested Issue Concerning  
Discriminatory Conduct Should  
Be Added

37. With its Petition to Enlarge Issues, Four Jacks submitted a copy of the decision of the United States District Court for the Western District of Tennessee in Lowery v. WMC-TV, 658 F. Supp. 1240 (W.D. Tenn. 1987) (Exhibit 8 to Four Jacks' Petition to Enlarge). In that case the District Judge found "pervasive, continuous, invidious and on-going" racial discrimination against Lowery by Scripps Howard's Station WMC-TV. 658 F. Supp. at 1244. He stated that "[t]his trial record demonstrates a worst-case scenario of sophisticated and subtle racism in private sector employment." Id.

38. In its Opposition, Scripps Howard first argues that the District Court in Lowery v. WMC-TV ultimately vacated its